

**LFC Requester:****Theresa Rodgers/Aurora  
Sanchez****AGENCY BILL ANALYSIS  
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original**    ☒ **Amendment**    ☐  
**Correction**    ☐ **Substitute**    ☐**Date** 1/10/16**Bill No:** HB 82**Sponsor:** Jim Dines**Agency Code:** 305**Short**    Habitual Offender Sentencing**Person Writing**    Jeres S. Rael, AAG**Title:**    and DWI**Phone:** 505-629-9131    **Email** jrael@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Relationship: HB 35

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

HB 82 would incorporate driving while intoxicated (“DWI”) pursuant to §66-8-102 NMSA 1978 into New Mexico’s Habitual Offender Statute (“HOS”), thus squarely addressing *State v. Anaya*, 1997-NMSC-010.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

The New Mexico Supreme Court in *Anaya* found that without clear legislative intent that felony violations §66-8-102 did not fall under the HOS. HB 82 would clarify any ambiguity and affirmatively state they do. The defendant’s in *Anaya* also raised “double use” constitutionality questions if §66-8-102 did fall under the HOS. The dissent in *Anaya* stated that “double use” may be allowable if there is clear legislative intent allowing for the double enhancement. HB 82 also clearly states that “double use” would be allowable.

Should HB 82 pass, *Anaya* would be re-litigated especially regarding the “double use” concerns based on double jeopardy grounds. Also new litigation may arise on how DWI is self-enhanced, as *State v. Linam*, 1979-NMSC-004 does not apply to DWI enhancement.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relationship: HB 35

**TECHNICAL ISSUES**

N/A

**OTHER SUBSTANTIVE ISSUES**

N/A

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

**AMENDMENTS**

N/A